

MEMORANDUM OF LAW

DATE: March 9, 1988

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Residency/Registration Requirements for Mayoral
Candidate

This is in response to your memorandum of February 24, 1988, addressed to Ted Bromfield, Chief Deputy City Attorney, requesting an opinion on the eligibility of a potential candidate for Mayor, Mr. Ronald Spangler, to qualify for the June 7, 1988, primary election ballot. The following facts were presented in your memorandum and supplemented by your assistant, Mikel Haas.

FACTS

Mr. Spangler appeared in the Clerk's office to obtain nomination papers and petitions. He listed his residence in the nominating petition statement and affidavit (copy attached) as 7002 Linda Vista Road, however, he listed his residential address on his voter registration affidavit (copy also attached) as 236 Kalmia Street. A check with the County Registrar confirmed that Mr. Spangler has been registered to vote at the Kalmia Street address since 1985. Mr. Spangler explained that he moved out of Kalmia Street in 1985 and, up until two months ago, has been living in his car. He states that when he moved out of Kalmia Street, he contacted the Registrar about a change of address, but was told by the Registrar's staff "just to continue using his last address." Two months ago he moved in with friends at the Linda Vista address.

The last date for filing nominating papers for the June 7, primary is March 10, 1988.

QUESTION

Under the circumstances described above, is Mr. Spangler legally registered to vote, and does he--or can he--meet the residency and registration requirements established by San Diego Municipal Code Section 27.2023?

ANSWER

Yes, absent facts indicating a fraudulent intent to avoid the election laws.

LEGAL ANALYSIS

San Diego Municipal Code (SDMC) Section 27.2023 reads in pertinent part as follows:

No person shall be eligible to or hold the office of

Mayor . . . either by election or appointment, unless that person is, at the time of assuming such office, a resident and elector thereof and was a registered voter of the City at least thirty (30) days prior to the date nominating papers were filed by the candidate pursuant to Section 27.2111 governing the filing of nominating papers or 27.3209 governing the time of filing nominating papers of this Article Emphasis added.

This Municipal Code provision and related law as they pertain to mayoral candidates' residency and voter registration are addressed in a memorandum of law dated March 9, 1988, containing similar questions coming from two other potential mayoral candidates (Rick Anderson and Edwin Emery); therefore, the law will not be repeated here except as it is applied to the facts. A copy of that memorandum is attached.

The first question presented by the above-cited ordinance is whether Mr. Spangler will meet the residency requirements at the time he takes office, assuming he is elected to that post. Obviously, the question is premature and will not be answered at this time.

The second question presented is whether Mr. Spangler was a registered voter of The City of San Diego thirty (30) days prior to the time he filed his nominating papers. Although we do not know the date he will in fact file them, we do know that the last date for filing them is March 10, 1988. Assuming he files on that date, we need to determine whether he was a registered voter as of February 9, 1988.

State elections law requires that a person be registered under that law before voting. The voting precinct in which a person may vote is based normally upon a person's residence address. The statutory scheme recognizes, however, that not everyone has a fixed address to establish residency. For example, Elections Code Section 207 in part states that "residence in a trailer or vehicle at any public camp may

constitute a domicile for voting purposes if the registrant complies with the other requirements of this article."

Furthermore, the courts have acknowledged that a "versatile concept of residency harmonizes with the 'fundamental statutory policy' in California of effectuating and maintaining at the highest possible levels voter registration and voting." Collier v. Menzel, 176 Cal.App. 2d, 31 (1985).

In the present instance, Mr. Spangler registered to vote at the Kalmia Street address at the suggestion of the Registrar's

office when he started living in his car. He apparently made a good faith, conscientious effort to remain eligible to vote despite his lack of a fixed abode.

Given the strong federal and state policy favoring voters' rights and constitutional protections of the right to vote, Mr. Spangler would likely be found to be a validly registered voter at the Kalmia Street address as long as he lived in his car.

The question is whether he should have re-registered to vote once he started living with his friends at the Linda Vista address. The facts are not clear whether Mr. Spangler lives only temporarily at this address, or intends to stay there. If living there only temporarily, it is not considered a residence for voter registration purposes. Election Code Section 202. Therefore, his Kalmia Street registration remains valid.

If, on the other hand, Mr. Spangler intends to make the Linda Vista address his domicile and he actually lives there, not in his car, then he should re-register to vote using that address as his residence on his voter registration affidavit, or send a letter notifying the Registrar of the change of address in lieu of affidavit. Elections Code Sections 305, 315 and 504.

Assuming Mr. Spangler has indeed taken up residence on Linda Vista Road, then the question is: Does Mr. Spangler's voter registration become invalid because he moved from his car to an abode with a fixed address? We have stated in a recent memorandum of law that a person does not lose his voter registration status just because he moves (memorandum of law addressed to yourself, dated February 29, 1988, regarding Residency and Voter Registration/Eligibility Requirements for Mayoral Candidates about a Mr. Robert McCullough, copy attached). For the reasons stated in that memorandum, we do not believe that Mr. Spangler lost his valid registration status just because he moved to Linda Vista Road. He should be advised, however, to notify the Registrar of his new residential address immediately if he indeed intends to make that his home.

We conclude that Mr. Spangler was a validly registered voter of this City as of February 9, 1988.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:fs:930(x043.2)

Attachments

ML-88-26